

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAJOR ELEVATOR CORP,

Plaintiff,

—against—

EZQUIRE ELEVATOR, LLC, JOEL

SMITH, and ANTHONY GRAVES,

Defendants.

Index No. **1:17-cv-03427-ALC**

AFFIRMATION IN SUPPORT OF
REQUEST FOR CERTIFICATE OF
DEFAULT

T. Austin Brown, Esq., an attorney duly admitted to practice in the Courts of the State of New York, and not a party to this action, affirms the following under the penalties of perjury:

1. I am the attorney of record for the Plaintiff in this action, and am fully familiar with the facts and circumstances of this matter.
2. This action was commenced in the Supreme Court of the State of New York, County of New York on February 10, 2017.
3. Service was complete on April 14, 2017, and the proof of service was filed on April 26, 2017.
4. On May 8, 2017, Defendants filed a notice to remove to the United States District Court for the Southern District of New York.
5. Since that time, Defendant has failed to file an answer, motion, or responsive pleading.
6. The time for the Defendants to appear and answer has expired, and has not been extended. The Defendant(s) have not answered the Complaint herein.
7. The items of disbursements hereinafter delineated are allowed by law, have been or will be necessarily incurred, and are reasonable in amount.
8. Upon information and belief, the current addresses of the Defendant(s) are: .
9. Pursuant to the Department of Defense Manpower Data Center Report, Defendant(s) are not in the active military service of the United States.
10. None of the defendants herein are infants or incompetents.
11. Defendant(s) are indebted to plaintiff in the following manner:

- a. On or about March 2016, Plaintiff and Defendants entered two contracts for the Defendants to provide the labor to install elevators in two buildings in Manhattan, 552 West 29th Street, and 1711 1st Avenue, for a total of \$310,000.00 to be paid out on a weekly basis. Plaintiff provided the materials used by the Defendants. Please see the attached contracts as exhibits.
 - b. In all, Plaintiffs paid Defendants \$316,237.63, by checks, which were all cashed by the Defendants.
 - c. Despite being paid, Defendants did not install operational elevators, and, in fact, had long abandoned the project, leaving most essential parts uninstalled, while still cashing the checks sent by Plaintiff.
 - d. In addition to the Defendants' failure to perform the installation of the elevators, the Defendants misrepresented their workers' compensation insurance coverage, providing a certificate showing a policy covering from 11/1/2015 to 11/1/2016. In fact, Defendants were not covered for the period from March to October of 2016.
 - e. Relying on the Defendants' misrepresentation, the Plaintiff agreed to hire the Defendants to perform the work.
 - f. As a result of the Defendants' misrepresentations, Plaintiff is liable for a \$20,164.00 premium increase in Plaintiff's worker's compensation coverage due to hiring uninsured subcontractors. Please see attached worker's comp bill.
12. The Second Circuit has approved the holding of an inquest by affidavit, without a hearing, as long as the court has 'ensured that there was a basis for the damages specified in the default judgment.' (Transatlantic Marine Claims Agency, Inc., 109 F.3d at 111; Govt. Emples. Ins. Co. v Badia, 2015 US Dist LEXIS 35224, at *62 [EDNY Jan. 31, 2015, No. 13-CV-01720 (CBA) (VMS)].)
13. The attached exhibits should provide sufficient basis to grant default judgment without the need for in-person inquest.

WHEREFORE, plaintiff requests that the default be noted against the defendants in the amount of \$360,000.00, along with the costs and disbursements of this action, and a certificate of default issued.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the amount claimed is justly due to plaintiff, and that no part thereof has been paid.

Dated: *June 26, 2017*

By: 

T. Austin Brown, Esq.

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